

CRIMINAL REVISION.*Before Mr. Justice Holmwood and Mr. Justice Imam.*

MANIRUDDIN SIRCAR

v.

ABDUL RAUF.*

1912

April 18.

Criminal Revision—Dismissal of complaint, reasons for—Criminal Procedure Code (Act V of 1898), s. 203—Grounds not taken in the first Court of Revision might be taken in the High Court—Government Circular, its effect—Statute law—Practice.

Grounds, which were not urged in the first Court of Revision, might be taken in the High Court.

Under s. 203 of the Criminal Procedure Code (Act V of 1898) reason for dismissing the complaint must be recorded.

No circular of the Government can authorize Magistrates to infringe, or in any way alter, the statute law.

On the 2nd of January 1912, one Maniruddin Sircar made a complaint before the Subdivisional Magistrate of Tangail against the Sub-Inspector in charge of Gopalpur and two policemen, charging them with having extorted Rs. 100 as bribe for withholding the search of his house. After examining the complainant, the Subdivisional Officer asked the second Magistrate to hold a local enquiry. Thereupon the second officer examined ten witnesses locally. These witnesses were cross-examined at length for the defence. On the 11th of January 1912 the second officer submitted his report recommending trial of the Sub-Inspector.

On receipt of the report submitted by the 2nd officer, the Subdivisional Officer called for some police

* Criminal Revision, No. 357 of 1912, against the order of J. D. Cargill, Sessions Judge of Mymensingh, dated Feb. 29, 1912.

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papers and also some witnesses mentioned by the accused Sub-Inspector.

After examining the witnesses, the Subdivisional Officer, on the 7th of February 1912, dismissed the complaint under s. 203 of the Criminal Procedure Code, and directed the complainant to be prosecuted under s. 211 of the Indian Penal Code.

Against that order the complainant moved the District Judge, who, by his judgment dated the 29th of February 1912, declined to interfere in the matter. Against this order of the District Judge, the complainant moved the High Court and obtained the present Rule.

Babu Narendra Kumar Bose, for the petitioner.

HOLMWOOD AND IMAM JJ. This was a Rule calling upon the District Magistrate of Mymensingh to show cause why an order for further enquiry in this case should not be made, and why the order for prosecution under section 211 of the Indian Penal Code passed should not be set aside on detailed grounds which after considering the general allegations of the petitioner we ourselves formulated with some care. The learned Judge takes exception to the Rule on the ground that these reasons which, as we have said, we ourselves formulated with some care, are not grounds which were urged before him, and this is an infringement of the spirit of the High Court's order that in revision matters must first of all be urged before the first Court of revision. We do not think it is so. The matter was put before us by the learned vakil in precisely the same general way in which it was put before the learned Judge, the principal arguments being, *first*, that on the evidence further enquiry should be ordered, and, *secondly*, that even if such

further enquiry were not ordered, the evidence did not justify the proceeding under section 211. We found that there were rather more intricate and important points involved in this matter; and if the petitioner takes advantage of the superior intelligence and legal training of the learned vakils of this Court, we cannot see why he should be debarred from urging even new matter in moving this Court. It may very well be that the learned vakil in the mufassil neither knew nor appreciated the points which might be raised in a case of this kind.

Now coming to the merits of the matter, the learned Magistrate admits that he is out of Court, inasmuch as he did not record any reasons for dismissing the complaint. It is an imperative provision of the law which has been specially enacted in the latest amendment of that law in section 203, Criminal Procedure Code. The law says that in such cases he shall briefly record his reasons for dismissing the complaint. There can be no question of irregularity where the provisions of the statute are imperative and are directly disobeyed. We need not go into the other points, inasmuch as if the order of dismissal is without jurisdiction and altogether bad there must be a further enquiry, and there cannot be any proceeding under section 211 until such further enquiry has been made.

Having regard to the very unfortunate results of a certain Circular of the Government of Bengal, which is constantly being referred to before us, with regard to enquiries which ought to be made into the conduct of Police officers when they are charged with any offence, we wish to point out that no Circular of the Government can authorize Magistrates to infringe or in any way alter the statute law. We have no doubt that this Circular was never intended to

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cause any modification in the procedure laid down by the Code of Criminal Procedure, nor does it appear to us to necessitate any alteration in the regular procedure of the Courts. The Government very properly have said that in their opinion, when a Police officer is charged with a serious offence, that that offence should be enquired into at once on the spot by a Magistrate of the first class. That does not mean that the Subdivisional Officer, if he has not got time to make the enquiry himself, can make use of the provisions of section 202, Criminal Procedure Code, and send it to a Subordinate Magistrate to hold a local investigation and examine both sides and then afterwards treat it as if the matter was still in his file. What the Circular means and what the proper procedure is, is that an experienced first class Magistrate should himself hold the enquiry, if possible, and if he is to depute it to another first class Magistrate, that first class Magistrate should from the first have seisin of the case, and should investigate the case in any way he thinks proper and should decide it finally. But the view, which some of the lower Courts have taken of the Circular, has resulted in their holding a vicarious trial by means of another Magistrate hearing both sides and then ordering prosecution for bringing a false case without having disposed of the original complaint. All sorts of irregularities and failures of justice have followed in consequence. We hope that after this expression of our opinion, the procedure adopted will in future be in conformity with law. In this case we think the best way to deal with it would be to summon the Sub-Inspector before the Magistrate having jurisdiction and call upon him to answer to those offences which the investigating Magistrate has found there is reason to believe he committed, so as to save all further necessity for

enquiries under section 202 or any other preliminary investigation.

The Rule is made absolute in these terms, and there will be further enquiry in the manner we have indicated.

S. K. B.

Rule absolute.

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APPELLATE CIVIL.

Before Justice Sir Cecil Brett and Mr. Justice N. R. Chatterjea.

KUMED BEWA

v.

PRASANNA KUMAR ROY.*

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 May 6.

Execution of decree—Notice of execution—Sale—Civil Procedure Code (Act V of 1908), s. 47, O. XXI, rr. 22 and 90—Omission to serve notice, effect of—Whether subsequent sale void—Question relating to execution of decree—Second appeal.

Omission to serve a notice under the provisions of O. XXI, r. 22 of the Civil Procedure Code is not by itself sufficient to render a sale, which has been subsequently held, void.

Sahdeo Pandey v. Ghasiram Gyawal (1) not followed.

Though an application to set aside a sale on the ground that no notice had been served as required by O. XXI, r. 22 of the Civil Procedure Code is one which cannot be made under the provisions of O. XXI, r. 90 of the Code, but must be one made under the provisions of s. 47 of the Code, still in order to justify a Court in setting aside a sale on the ground of the omission to serve a notice under O. XXI, r. 22, it must be proved that the omission to serve such notice has resulted in substantial injury to the owner of the property sold.

Lakshmi Charan Sen v. Sris Chandra Roy (2) referred to.

* Appeal from order, No. 223 of 1911, against the order of B. C. Mitter, District Judge of Murshidabad, dated Feb. 3, 1911, confirming the order of Gajanan Banerjee, 2nd Munsif of Jangipora, dated Sept. 26, 1910:

(1) (1893) I. L. R. 21 Calc 19.

(2) (1910) 13 C. L. J. 162.